

July 28, 2014

George Hicks, Chair
and Members of the California Uniform Construction Cost Accounting Commission
c/o State Controllers Office
Local Government Policies Section
P.O. Box 942850
Sacramento, CA 94250

RE: Request for Clarification
Can a CUCCAA participant use job order contracting for informally bid projects?

Dear Chairperson Hicks and Commissioners:

I understand the Commission has scheduled a meeting for August 14, 2014 and hope this request can be included on the agenda. I am writing on behalf of the Construction Industry Force Account Council (CIFAC) to ask if a County signatory to the California Uniform Public Construction Cost Accounting Act (§22000 et seq.) can informally bid an annual job order contract in amounts of \$1.5 million and \$3 million each and give the same awarded contractor public projects throughout the one year term of contract of up to \$175,000 each.

- Although a County may award Job Order Contracts as seen in ****PCC §20128.5.**, it clearly states “for repair, remodeling, or other repetitive work to be done according to unit prices. No annual contracts may be awarded for any new construction”.
- The County of Ventura, who is signatory to the Act, may informally bid per CUCCAA - ***PCC §22032 (b)** “Public projects of \$175,000 or less may be let to contract by informal procedures”
(* / ** Please see below for these PCC sections in their entirety)

CIFAC’s concern is the County of Ventura is combining the rules of CUCCAA with the project delivery method of a Job Order Contract.

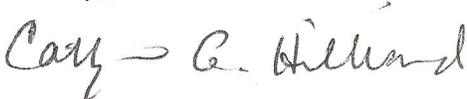
1. The County informally bids specialty (trade) Job Order Contracts for amounts not to exceed \$1.5 million or \$3 million annually.
2. The annual JOC is awarded to one contractor.
3. Purchase Orders (task orders) are issued for public projects to awarded contractor, not to exceed \$175,000 each to the cap of \$1.5 or \$3 million annually.
4. The County of Ventura has recently renewed 2 option years for several JOC’s without bidding.
5. The County of Ventura has stated in bid invitations, agenda reports and in correspondence with CIFAC that the annual JOC’s include new construction.
6. The County of Ventura has notified CIFAC they “have a long history of managing and utilizing a very successful JOC contracting program which effectively achieves timely and competitive completion of our budgeted public projects.”

Although Field Representative, Shari Pence, has communicated concerns with this method of contracting, the County of Ventura states "we remain confident that our County of Ventura JOC program and contracts are fully in compliance to Public Contract Code." We have exhausted our efforts in conveying to the County of Ventura they may be in violation of the PCC and request the Commission's opinion for the following reasons:

1. How can a participating agency use informal bidding for contracts awarded in excess of \$1.5 million to \$3 million when the total value exceeds the CUCCAA informal bid limit of \$175,000?
2. How can a participating agency assign purchase orders (task orders) of up to \$175,000 each to the same contractor under an annual job order contract (cap of up to \$3 million annually) and not let each individual public project to contract by informal bid procedures?
3. How can a participating agency renew options on informally bid annual JOC's, without public bidding, for an estimated total value of \$7.5 million (total of three JOC contracts renewed in 2014 to date) to be used for individual projects of up to \$175,000 each throughout the year 2014?
4. How can a participating agency award annual "Specialty (trade) Job Order Contracts" and include public projects of new construction when the PCC specifically states JOC's are for repair, remodeling, or other repetitive work (maintenance) to be done according to unit prices?

CIFAC is a non-profit organization that monitors governmental agencies to ensure they abide by the California Public Contract Code. The Commission's response to this inquiry will help CIFAC ensure the proper use of the rules of CUCCAA for the County of Ventura and other counties which could be using job order contracts in the same manner. We appreciate your consideration of our request for clarification and look forward to your response.

Sincerely,



Cathryn A. Hilliard
Executive Director
Construction Industry Force Account Council (CIFAC)

Attachments: County of Ventura, Invitation to Bid #5614 (Paving)
County of Ventura, June 17, 2014 Agenda Report (renewal of option year for JOC's)
County of Ventura email response dated December 2, 2103 (see highlighted paragraphs)

***PCC §22032.** (a) Public projects of forty-five thousand dollars (\$45,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order. (b) Public projects of one hundred seventy-five thousand dollars (\$175,000) or less may be let to contract by informal procedures as set forth in this article.

(c) Public projects of more than one hundred seventy-five thousand dollars (\$175,000) shall, except as otherwise provided in this article, be let to contract by formal bidding procedure.

****PCC §20128.5.** Notwithstanding any other provisions of this article, the board of supervisors may award individual annual contracts, none of which shall exceed three million dollars (\$3,000,000), adjusted annually to reflect the percentage change in the California Consumer Price Index, for repair, remodeling, or other repetitive work to be done according to unit prices. No annual contracts may be awarded for any new construction. The



contracts shall be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work. No project shall be performed under the contract except by order of the board of supervisors, or an officer acting pursuant to Section 20145. For purposes of this section, "unit price" means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project. For purposes of this section, "repair, remodeling, or other repetitive work to be done according to unit prices" shall not include design or contract drawings.





INVITATION TO BID #5614 (PAVING) - Bid Opening 4:00 P.M.

Sealed bids will be received by the Ventura County Purchasing Agent until the indicated bid opening time on **Friday, April 6, 2012** at Ventura County General Services Agency/Procurement Services, Hall of Administration-Lower Plaza, 800 South Victoria Avenue, Ventura, California 93009-1080, for the following project. Time is of the essence, and all bids received after the appointed hour for submission, whether by mail or otherwise, will be returned unopened. **Bids may not be submitted by facsimile machine.**

(1) JOB ORDER CONTRACT

A Job Order Contract (hereinafter called JOC) is a competitively bid, firm fixed priced indefinite quantity contract. It is placed with a Contractor for the accomplishment of **repair, alteration, modernization, maintenance, rehabilitation, construction, etc., of buildings, structures, or other real property.** It includes a collection of detailed repair and **construction tasks** and specifications that have established unit prices. In order to be considered responsive, the bidder must submit adjustment factors to the published unit prices contained in the contract documents. Individual projects are priced by selecting the proper construction tasks and multiplying them by the correct quantity and appropriate adjustment factor. Ordering is accomplished by means of issuance of a Work Order against the Contract.

Contractor, under the JOC contract, furnishes all management, labor, materials and equipment needed to perform the work.

Contractors must have a valid license, as issued by the Contractors' State License Board, **Classification C-12.** Proper license is required prior to award of contract in order to be considered a responsive bidder.

It is the intention to award one (1) JOC Contract under this solicitation. This solicitation has two (2) one year options to extend, for a total contract duration of three (3) years maximum. The maximum potential aggregate value of each contract is \$3,000,000, adjusted annually to reflect the percentage change in the California Consumer Price Index since January, 1998. The term of each contract will be for one year or expenditure of the maximum potential value of the contract, whichever occurs first.

There is no minimum value associated with individual Work Orders issued under this contract. The maximum value of individual Work Orders issued under this contract will be \$175,000. The County reserves the right to make additional awards under this solicitation for a period of one year after the opening of bids.

Bidders must attend a **Mandatory** Pre-Bid conference to be held at the County of Ventura, Service Complex, General Services Agency, Training Room, 800 South Victoria Avenue, Ventura, California, at **11:00 a.m. (PT), Thursday, March 29th** for the purpose of explaining the JOC concept, discussing JOC from the contractors' perspective, distribution of documents and answering questions. ***Be early, the door will be closed at the appointed time.***

Prospective Bidders may obtain one set of the bid and contract documents at the Pre-Bid Conference, or thereafter at Procurement Services, County of Ventura, 800 South Victoria Avenue, Ventura, California 93009-1080.

The County of Ventura reserves the right to accept or reject any or all bids and to waive all technicalities and formalities.

For additional information, contact Boyd Donavon, Assistant Purchasing Agent, via e-mail at boyd.donavon@ventura.org

- END OF INVITATION TO BID -



county of ventura

Paul S. Grossgold
Director

June 17, 2014

GENERAL SERVICES AGENCY
800 South Victoria Avenue, L#1000
Ventura, CA 93009
(805) 654-3700

County of Ventura
Board of Supervisors
800 South Victoria Avenue
Ventura, CA 93009

SUBJECT: Approval of and Authorization for the Purchasing Agent to Renew Three Informally Bid Job Order Contracts

RECOMMENDATIONS:

1. Authorize the Purchasing Agent to renew for second option year a general Job Order Contract (JOC) for general trades projects to MTM Construction, Inc., not to exceed \$3 million for which the value of each individual project undertaken will not exceed \$175,000.
2. Authorize the Purchasing Agent to renew for second option year a specialty JOC for paving, to J&H Engineering, not to exceed \$3 million for which the value of each individual project undertaken will not exceed \$175,000.
3. Authorize the Purchasing Agent to renew for second option year a specialty JOC for security electronics to LJ & Associates Inc., not to exceed \$1.5 million for which the value of each individual project undertaken will not exceed \$175,000.

FISCAL/MANDATES IMPACT:

The JOC serves as a mechanism to facilitate completion of certain types of planned and budgeted projects. All project costs are charged to the specific fund in which each project is budgeted.

Mandatory:	No
Source of Funding:	Facilities Projects, Required Maintenance, and other Departments
Funding Match Required:	N/A
Impact on Other Departments:	Improves service delivery

Paul R. Young
Chief Deputy Director
Facilities & Materials

Greg Bergman
Deputy Director
Administrative Services

Ron Van Dyck
Deputy Director
Parks Department

Rod Lohof
Interim Manager
Fleet Services

Summary of Revenues and Costs:	<u>FY 2013-14</u>	<u>FY 2014-15</u>
Revenue:	\$50,490	\$ 454,410
Costs:		
Direct	\$50,490	\$ 454,410
Indirect-Dept.	\$ 0	\$ 0
Indirect-County CAP	<u>\$ 0</u>	<u>\$ 0</u>
TOTAL Costs	<u>\$50,490</u>	<u>\$ 454,410</u>
Net Gain/(Loss):	\$ 0	\$ 0

* Revenue and Total Costs are estimated GSA Project Management Fees.

FY 2013-14 Budget Projection as of March 31, 2014 GSA Facilities Projects - Budget Unit 7112				
	Adopted Budget	Adjusted Budget	Projected Budget	Estimated Savings / (Deficit)
Appropriations	\$ 7,144,308	\$ 7,922,425	\$ 3,886,482	\$ 4,035,943
Revenue	\$ 7,132,897	\$ 7,132,897	\$ 3,058,123	\$(4,074,774)
Operating Gain/(Loss)*	\$ (11,411)	\$ (789,528)	\$ (828,359)	\$ (38,831)

*Other Financing Uses are included. The Projected Operating Loss will be covered by Unrestricted Net Position.

DISCUSSION:

On May 1, 2012 your Board awarded the informally bid JOC for the services listed in the three recommendations. Each informally bid JOC has an initial term of one year and provision for two one-year renewal options, which may be exercised by mutual written agreement and dependent upon our client workload and satisfactory contractor performance. On June 18, 2013, your Board authorized first option year renewal of the three contracts. We are requesting your Board's approval for the Purchasing Agent to renew these three JOCs for the second option year. Renewal will be to MTM Construction Inc., City of Industry, California, for general trades; J & H Engineering General Contractors, Inc. of Camarillo, California, for paving; and LJ & Associates Inc., Tustin, California, for security electronics. Upon your Board's approval of these recommendations, the Purchasing Agent will execute standard form renewals of the JOCs with each contractor within thirty (30) days.

Work is assigned by issuance of standard purchase orders incident to approval of each task order for individual projects. These purchase orders will be used to issue JOC task orders for our clients' budgeted informally bid projects when project costs are less than \$175,000. Award of informally bid JOCs is authorized under the California Uniform Public Construction Cost Accounting Act (CUPCCAA) Sections 22030-22045. Public projects of \$175,000 or less may be let to contract by the informal bid procedures set forth in the California Public Contract Code 22032(b). Although CUPCCAA does not call for a cap on the aggregate value of projects undertaken, it does cap the value of each separate project task order at \$175,000.

General Services Agency (GSA) has set a \$3 million annual cap for the general construction JOC and for the paving specialty JOC, based upon our projected Client workload. GSA has set a \$1.5 million annual cap for the security electronics specialty JOC, based on a lower annual projected workload. JOCs are subject to prevailing wage, and therefore are exempt from the Living Wage Ordinance.

This letter has been reviewed by the County Executive Office, Auditor-Controller's Office, and County Counsel.

If you have any questions regarding this item, please call Rosa Cenicerros at 654-5133.


Paul Grossgold
Director

c: Rosa Cenicerros, General Services Agency Procurement, L#1080
Paul Young, General Services Agency Facilities, L#3000

-----Original Message-----

From: Glenn Hemme [<mailto:Glenn.Hemme@ventura.org>]

Sent: Monday, December 02, 2013 4:17 PM

To: Shari Pence

Cc: Paul Grossgold; PAUL Young; Rosa Cenicerros

Subject: County of Ventura GSA Job Order Contracts awarded per CUPCCAA

Shari

I and several other County Managers involved with managing functions of procurement and facilities contracting do routinely give significant attention that each public project and each JOC contract bid and awarded by the Board of Supervisors is fully in compliance with all applicable sections of the Public Contract Code(PCC). Your letter has prompted our internal review of PCC statute basis and contracting procedures which apply to each of the two types of County of Ventura JOC contracts. We are confident that both types of our JOC contracts are respectively fully in compliance to PCC sections of the Local Agency Public Construction Act and to PCC sections of the Uniform Public Construction Cost Accounting Act(CUPCCAA). I have pasted below links and key excerpts to PCC sections for my discussion below of both types of our JOC contracts. I have also attached several references relevant to the County of Ventura initiating our JOC contracting program, now in-place for 18 years, and still proving very effective and cost efficient for executing the County's public project budgets each year.

As you note, PCC section 20128.5. of the Local Agency Public Construction Act is a primary reference for JOC contracting. County of Ventura uses that section specifically as basis for our general JOC contract type which we formally advertise and bid; to be utilized to award JOC Task Orders for public projects exceeding \$175k which involve repair, remodeling, or other repetitive work. Our first general JOC of that type was awarded by the Board of Supervisors in 1998; copy attached. We fully concur that type of general JOC cannot be used for public projects for new construction work, which may generally be identified as adding footprint to existing facilities & improvements or as adding a new facility. At County of Ventura, such new construction public projects exceeding \$175k are routinely referred to the Public Works Agency for formal bidding; and are not managed by the General Services Agency.

Our second type of County of Ventura JOC is the Informally Bid CUPCCAA JOC contracts which you reference in your letter. Our Informally Bid JOC contracts are specifically based on and cite CUPCCAA sections 22030-22045; to be utilized to award JOC Task Orders not exceeding \$175k and to perform public projects defined by CUPCCAA section 22002 which includes minor construction and the renovation, alteration, painting, or repair of existing facilities. Our advertising and bidding of the Informally Bid JOC contracts is pursuant to the procedures of the CUCCAC Cost Accounting Policies and Procedures Manual.

The essential issue which you pose in your letter is if a county may enter into a JOC for the performance of public projects as defined within the CUPCCAA sections and within the current \$175k informal contracting limit. A related question and several related clarifications were previously addressed by a 1993 opinion of the CA Attorney General. Note that CUPCCAA section 22032 as published in the CUCCAC Cost Accounting Policies and Procedures Manual has a footnote to "76 Op. Atty. Gen. 126,7-14-93". I have attached the 1993 opinion and pasted below key excerpts indicating such applicability to utilize JOC contracting for CUPCCAA public projects. Our first County of Ventura JOC contract was based on CUPCCAA sections 22030-22045 and was awarded by the Board in

December, 1995. The 1993 Attorney General opinion was a key consideration to determine basis for setting up our initial JOC as a multi-year CUPCCAA type.

At that time, we could issue CUPCCAA JOC Task Orders for public projects not exceeding \$75k as the informal contracting limit. Our motivation for implementing JOC was to improve GSA's efficiency to award and manage specifically the significant volume of such informal facilities contracts for infrastructure requirements of GSA and for remodeling requirements of our other County Clients. See the attached 1995 Board Letter. Note also the attached follow-up 1997 internal summary analysis which outlines decision to also award the other type of general JOC per PCC 20128.5 to be complementary to our CUPCCAA JOC. I note that a goal stated by PCC section 100 is for public contracting to be efficient and the product of the best of modern practice. For informal scale public projects, our JOC program achieves that while still complying and realizing all requirements and intent of the CUPCCAA sections.

We specifically bid our CUPCCAA JOC's competitively and per the informal bidding procedures of the CUCCAC Cost Accounting Policies and Procedures Manual. This provides bidding opportunity for local Contractors to compete favorably, particularly for the speciality trade JOC's. Award of JOC Task Orders for individual public projects quickly and efficiently gets budgeted public projects under contract. That results in local journeymen and craftsmen being quickly employed to complete the public projects work required by the County. I note that we do also utilize our CUPCCAA JOC contracts to issue JOC Task Orders for public projects less than \$45k and for maintenance projects as defined by CUPCCAA section 22002. GSA has in-house maintenance staffing sufficient to perform only the daily maintenance functions. GSA Maintenance staffing is not sufficient to even consider potential in-house performance of public projects exceeding the \$45k force account limitation.

Our JOC Contractors are under one year contract term; and our volume of JOC Task Orders to be issued is very much dependent on the JOC Contractor demonstrating prompt, effective and cost efficient performance of each public project. My experience is that the JOC Contractors quickly recognize that operating in a Teaming environment is to their advantage. PCC precludes us from so specifying, but JOC Contractors also tend to select local subcontractors to a significant extent; primarily to realize the advantages of least cost and of responsiveness to promptly start and complete each project, as inherent to employing local journeymen and craftsmen as more readily available to be on the job site each day. Overall, our JOC contracting program is a win-win situation for the County and for our Contractors and their employees, achieving prompt and effective budget execution at least cost for each of our public project requirements.

During my initial telephone discussions with you, I noted some extent of disconnect in our respective use of the term "new construction". A reason for that became clear when I noted the definition of NEW CONSTRUCTION as posted on the CIFAC website, as essentially borrowing the CUPCCAA section 22002 definition for "public project". Then CIFAC also applies that definition to the CIFAC definition of JOC. I therefore prefer to use for clarity the PCC defined "public project" terminology. I understand PCC section 20128.5. to prohibit "new construction" in the more traditional definition of added footprint as I have discussed above. I note that the CUPCCAA section 22002 definition for public project does include the tasks of "construction, reconstruction, erection, & alteration", each of which may result in added footprint. Our understanding is that our CUPCCAA JOC contracts can indeed be utilized for informal public projects involving these tasks and not exceeding \$175k. As you comment in your letter, I have

already acknowledged that only a very few public projects with those tasks have infrequently been issued by JOC Task Order under a CUPCCAA JOC. In practice, such added-footprint projects are extremely limited. As a practical matter, our function for serving our Clients relates to budgeted public project requirements for repair and remodeling of existing facilities and infrastructure. As a practical matter, "new construction" defined as adding footprint cannot typically be performed within the informal public project limit of \$175k, or within the previous informal limits in-place over the last 18 years of our JOC program.

I am available to further discuss details of our JOC contracting program as you desire when you have had opportunity to review this material and the references. I regret that your August 30 letter did not get promptly to my attention. I appreciate your accommodation for opportunity to do this Team review at our end, and for me to prepare appropriate response.

Sincerely
Glenn Hemme
Manager, GSA Projects Group
805/645-1356; [c]340-7536